

Sunset Public Hearing Questions for
TENNESSEE CLAIMS COMMISSION
Created by Section 9-8-301, *Tennessee Code Annotated*
(Sunset termination June 2019)

1. Provide a brief introduction to the Tennessee Claims Commission, including information about its purpose, statutory duties, staff, and administrative attachment.

Purpose & Duties: The Claims Commission is an administrative tribunal created to adjudicate money damages claims against the State based on the acts or omissions of state employees. As a condition for this waiver of its sovereign immunity, state employees are immunized from liability for state law claims for acts or omissions within the scope of their employment, except for willful, malicious, or criminal acts. These claims are payable from the Risk Management Fund. Damages for tort claims are limited to three hundred thousand dollars (\$300,000.00) per claimant or one million dollars (\$1,000,000.00) per occurrence. The Commission also has jurisdiction over cases involving alleged breach of contract actions against the State. There is no limitation on the amount of damages in these types of claims. In addition, the Commission awards compensation to victims of crime through the Criminal Injuries Compensation Fund. The limitation on the total amount of damages that may be awarded in those cases is thirty one thousand nine hundred dollars (\$31,900.00)

Staff: The Eastern division office has two staff members: both Administrative Assistants. The Middle division office has two staff members: an Executive Secretary and an Administrative Assistant. The Western division has two staff members: both Administrative Assistants. The Clerk's office is staffed by the Administrative Clerk.

Administrative Attachment: The Claims Commission is attached to the Department of Treasury for administrative purposes. The Treasury Department processes financial and personnel transactions on the Commission's behalf. The department also provides information technology support and other administrative support to the Commission.

2. Provide a list of current commission members, or their designees, and describe how membership complies with Sections 9-8-301 and 302, *Tennessee Code Annotated*. Are there any vacancies on the commission and, if so, what is being done to fill those vacancies?

Commission Members: There are three Claims Commissioners, one for each of the grand divisions. They are:

William A. Young, Eastern Division
Robert N. Hibbett, Middle Division
James A. Hamilton, III (Chairman), Western Division

As required by Tenn. Code Ann. § 9-8-302, each of the Commissioners was appointed by the Governor and confirmed by the legislature. In addition, each commissioner shall have resided in the grand division from which such commissioner is appointed for one (1) year prior to appointment, resided in Tennessee for five (5) years prior to appointment, and shall have been licensed to practice law in Tennessee for at least five

(5) years prior to appointment. No commissioner may practice law while serving on the commission.

Vacancies: There are no vacancies on the Claims Commission at this time.

3. What were the commission's revenues and expenditures for the last two fiscal years?

The revenues and expenditures are the same for each year because the Department pulls in revenue from the Risk Management Fund to cover the Claims Commission expenditures. Please see the expenditures/revenues below:

FY 17 - \$1,318,676; and
FY 18 - \$1,406,397 (preliminary total).

4. Has the commission promulgated rules as authorized in Section 9-8-306, *Tennessee Code Annotated*? If so, please cite the reference.

Yes. The Commission has promulgated rules that are codified in Chapter 0310-01-01 of the *Official Compilation of Rules and Regulations of the State of Tennessee*.

5. What reports does the commission prepare on its operations, activities, and accomplishments, and who receives these reports? If reports are available, please provide either a copy or an electronic link.

The Commission provides an annual statistical report relative to its caseload to the State Treasurer. This information is reported to the General Assembly as part of the Treasurer's Annual Report.

6. Is the commission subject to Sunshine law requirements (Section 8-44-101 et seq., *Tennessee Code Annotated*) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedure does the commission have for informing the public of its meetings and making its minutes available to the public?

The Commission subjects itself to the Sunshine Law. Notices of scheduled meetings are published at least two weeks prior to up-coming meetings on the web site <http://treasury.tn.gov/claims> and the Public Participation calendar by searching Department/Agency: Treasury Department at <https://apps.tn.gov/pmn/index.html>. Minutes of meetings are kept in the Clerk's office in Nashville and are available upon request.

Otherwise, the Claims Commission is specifically governed by Tenn. Code Ann. § 9-8-304(b) that states the Commission shall follow the same law established for the trial courts concerning opening proceedings to the public.

7. Please describe the duties and obligations of the administrative clerk authorized at Section 9-

The Clerk is the custodian of the official record of claims before the Commission. The Clerk is responsible for receipt and filing of pleadings, preparation and filing of the appellate record in the cases before the Tennessee Court of Appeals and the Tennessee Supreme Court, responding to case inquiries from litigants, and communicating with other state agencies on behalf of the Commission. The Clerk acts as an administrative liaison between the Treasury Department and the Claims Commission.

8. What types of claims fall within the commission's jurisdiction? How many claims of each type were filed with the commission during the last two fiscal years? How many of those claims required a formal hearing before the commission? What was the total dollar value of judgments awarded and the total by type of claim during the two year period? What was the average judgment per claim?

The Claims Commission has 22 areas of subject matter jurisdiction, which are set forth in Tenn. Code Ann. § 9-8-307(a)(1). They are:

- 1) The negligent operation or maintenance of any motor vehicle or any other land, air, or sea conveyance;**
- 2) Nuisances created or maintained;**
- 3) Negligently created or maintained dangerous conditions on state controlled real property;**
- 4) Legal malpractice or health care liability by a state employee;**
- 5) Negligent care, custody and control of persons;**
- 6) Negligent care, custody or control of personal property;**
- 7) Negligent care, custody or control of animals;**
- 8) Negligent construction of state sidewalks and buildings;**
- 9) Negligent design and construction of public roads, streets, highways, or bridges and negligence in maintenance of state highways, and bridges and similar structures;**
- 10) Dangerous conditions on state maintained highways;**
- 11) Workers' compensation claims by state employees;**
- 12) Actions for breach of a written contract;**
- 13) Negligent operation of machinery or equipment;**

- 14) Negligent deprivation of statutory rights created under Tennessee law;
- 15) Claims for recovery of taxes collected or administered by the State, except any tax collected or administered by the Commissioners of Revenue and Commerce and Insurance and any unemployment insurance tax collected or administered by the Commissioner of Labor and Workforce Development;
- 16) Claims for the loss, damage or destruction of the personal property of state employees based on § 9-8-111;
- 17) Claims for injuries incurred by persons where such injury occurred while the person was a passenger in a motor vehicle operated by a state employee while such employee was acting within the scope of employment;
- 18) Claims for libel and/or slander by a state employee;
- 19) Claims for compensation filed under the Criminal Injuries Compensation Act;
- 20) Actions based on § 69-1-201 (damages arising from hold harmless agreements required by army corps of engineers for water resource projects);
- 21) Actions based on violations of the requirements of procurement of commodities or services under title 71, chapter 4, part 7; and
- 22) Unconstitutional taking of private property, as defined in § 12-1-202, including intentional state governmental action resulting in a taking other than the taking of real property and real property rights for the state's system of highways or the state's system of interstate highways.

In fiscal years 2017 and 2018, the Commission received claims for state employee negligence of all types, workers' compensation claims, inmate personal property loss claims, employee property loss claims, breach of contract claims, criminal injury compensation claims, and tax recovery claims. The Commission uses the TrialWorks system as a case management system, but does not capture information in the format requested. All claims on the regular docket require a hearing unless they are decided on motion or have been settled. The information requested regarding the number of claims requiring a formal hearing, the total value of judgments awarded and the average judgment per claim is not captured on the Commission's case management system.

9. Section 9-8-208, *Tennessee Code Annotated*, provides for the commission to sit *en banc* upon the request of two commission members. How many *en banc* hearings have been held

in the last two fiscal years? What types of claims were heard?

There have not been any *en banc* hearings held in the last two (2) fiscal years.

10. Have there been any noticeable changes or trends concerning claims during the last few years? For example, has there been an increase or decrease in the total number of claims or specific types of claims, or a significant change in the size of claims or judgments?

There have not been any noticeable long-term trends in the claims filed before the Commission.

11. Section 9-8-308, *Tennessee Code Annotated*, levies a privilege tax of \$25.00 on the filing of claims with the commission with the provision that the tax is waived if claimants consent at the time of filing to have “their claims assigned to the small claims docket under Section 9-8-403(a)(2), and proceed upon affidavits filed with the claims commission without a hearing.” How many claimants used this exemption during the last two fiscal years? Did it make a significant difference in the hearing caseload handled by each commissioner and the commission as a whole? Is the amount of the tax levied sufficient for the purposes for which it was intended? If not, what adjustments need to be made?

During the 2017/2018 fiscal years, no claimants used the exemption from payment of the privilege tax. Because of this, it is difficult to determine if the amount of the tax is sufficient. The privilege tax did not appear to make any appreciable difference in the Commissioners’ hearing caseload.

12. In the last two fiscal years, has there been a temporary assignment of an administrative law judge to the commission under the provisions of Section 9-8-309, *Tennessee Code Annotated*?

No.

13. Section 9-8-310, *Tennessee Code Annotated*, allows for the filing of a grievance by any employee who feels they were terminated in retaliation for filing a workers’ compensation claim. How many such grievances were filed during the last two fiscal years? How many, if any, such grievances were determined to be well founded?

Tenn. Code Ann. § 9-8-310 permits employees in the preferred service system the option of filing a grievance in accordance with Tenn. Code Ann. § 8-30-318 or filing a claim with the Claims Commission. The Claims Commission is not notified if employees elect to use the grievance process and has no means of knowing the outcome of such proceedings.

Although claims for retaliatory discharge are filed with the Commission, such claims are categorized in the Commission’s case management system as Workers’

Compensation claims, rather than as claims for retaliatory discharge. Based upon the Commissioners' recollections, there were few, if any, claims for retaliatory discharge during fiscal years 2017 and 2018.

14. Describe any items related to the commission that require legislative attention and your proposed legislative changes.

There are no legislative changes requested at this time.

15. Should this commission be continued? In what ways would the absence of the commission affect the public health, safety, or welfare of Tennessee citizens?

Yes. The Tennessee Claims Commission should be continued. The Claims Commission is the primary vehicle through which the State of Tennessee may be held accountable for acts of negligence by its employees and breaches of contracts by various departments and agencies. This jurisdiction has been created by the Legislature and represents a studied decision by that body to waive the State's innate sovereign immunity from suit in limited areas. Sunset of the Commission would leave aggrieved citizens without the ability to seek compensation from the State for losses occasioned by state employee negligence and would subject state employees to suit personally for acts taken in the course and scope of their employment. Additionally, the Commission adjudicates claims under the Criminal Injuries Compensation Act, which provides benefits for innocent victims of serious crimes who have no other resources with which to defray the financial costs of those crimes. The Commission has developed a specialized expertise since 1985 in handling cases in which the State has decided to permit suit against itself. It is respectfully submitted that to sunset the Tennessee Claims Commission would result in the loss of a Commission that efficiently handles claims against the State.